IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 49 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

D V ISRANI

Versus

R C DALAL

Appearance:
NANAVATI ASSOCIATES for Appellant
NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE C.K.BUCH

Date of decision: 04/12/98

ORAL JUDGEMENT

The original petitioner, being aggrieved by the decision of the learned Single Judge in Special civil application No. 488 of 1987 dated 26.2.1987, has preferred this appeal.

The appellant was working as General Manager with

Respondent No.2- National Textile Corporation.Vide Annexure 'A' to the petition, the appellant was appointed as General Manager, Rajkot Textile Mills, Rajkot, a unit under the respondent corporation, on the terms and conditions mentioned therein. The total remuneration offered was not less than Rs. 2,700/- per month. As per clause 10 of the letter of appointment, the appellant during the employment with the corporation was to be governed by the rules , regulations, conduct and discipline rules and standing orders of the corporation which may be in force at the relevant time and which may be amended from time to time. In the said letter, there is no reference to the age of superannuation.The appellant was to reach the age of 58 years and was thus to be superannuated on 28.2.1987 and in fact, he has been superannuated.However,before superannuation,the petition was filed inter alia contending that the age of superannuation was not specified in the appointment order and in view of the circular/ memorandum at Annexure 'D' dated 18.12.1978 purported to have been issued by the Director (Commercial), an employee was to be superannuated on the date of attaining the age of 60 years .As there was subsequent change reducing the age of superannuation to 58 years, the appellant contended that , that being unfair and arbitrary, he cannot be superannuated.

The learned Single Judge pointed out that the corporation has right to determine the age of superannuation and that would bind the employees.According to the learned Single Judge, for any genuine grievance regarding his service condition having been changed subsequently and having been put to any financial loss, the remedy would be byway of a suit. Following a decision of this court, the learned Single judge dismissed the petition at admission stage.

Before us, it is contended that no doubt, the age of superannuation is not mentioned in the letter of appointment, but if vide Annexure 'D', the age of superannuation of all employees was raised to 60 years, the appellant was entitled to continue in service till he reached that age.

Dealing with the letter at Annexure 'D' , it is interesting to note that it does not refer to categories of employees and it does not indicate that the same is issued on the basis of decision taken by the Board in any of its meeting prior to December 1978.It is also interesting to note that the author of the letter is Director (Commercial) and not the Chairman. No doubt,

the Director (Commercial) is a responsible officer but the fact indicates that he was in charge of Commercial matters, it is difficult to understand how he could have issued the letter or memorandum in connection with superannuation of employee as extending the age of superannuation is absolutely a policy decision and that decision can be taken only by the Board of Directors and not by an individual. In view of this, reliance placed on Annexure 'D' is not fruitful at all for the appellant. There is no other strong piece of evidence placed on record justifying that age of superannuation was 60 and not 58 years.

It is contended before us that there were earlier resolutions passed in the meetings viz. meetings Nos. 101 and 102 . Resolution of 103rd Board meeting held on 28.4.1986 is placed on record. Reading that, it clearly transpires that there was some confusion about interpretation of the rules. May be,the earlier resolutions might have left some ambiguity and might have created some misunderstanding as a result of which it was clarified in the meeting held on 28.4.1986. So far superannuation is concerned, we reproduce the relevant clauses hereunder;

(a) The age of retirement in case of HQ employees will continue to be 58years as at present.

(b) The retirement age in case of employees of the Mills covered under the BIR Act and falling in the category of the awarded staff will continue to be 60 years.

(c) In case of employees of the Mills, who are not covered under BIR Act, and who are falling in the category of non awarded staff, the following decisions were taken:

i Wherever the appointment orders issued in the past clearly specify retirement age as 60 years or 58 years, the same should be continued as 60 or 58years respectively.

ii In case of others, the retirement age will be 58years. However, the Chairman-cum-Managing Director will have the discretionary powers to continue the employee upto 60 years of age depending upon his performance.

(d) All appointments orders to be issued in future

will clearly specify the retirement age as 58 years in case of all categories".

On behalf of the appellant, it is submitted that this has come into force with effect from 21.1.1986 and not prior thereto and,therefore, the age of superannuation of the appellant must be considered as 60 and not 58 years. So far as the employees who are governed under the Industrial Disputes ACT,1947 or Bombay Industrial Relations Act, 1946 are concerned, the age of superannuation of the employees is 60. This is clear from the resolution itself. Looking to the nature of service, availability of persons and various other factors, individuals were given appointment orders separately in the categories other than categories covered by or under the Industrial Disputes Act and Bombay Industrial Relations Act. It is a matter of contract between the two viz. employer and employee.It appears that the corporation had, in the appointment orders in some cases, specified the age of retirement as 60 years or 58 years and in some cases, it may not have been mentioned even. Therefore,clause (c) which we have reproduced above makes it very clear that wherever retirement age is mentioned as 60 years or 58 years, the person can be continued till 60 or 58 years as per letter of appointment and thus, the employee concerned will be superannuated as per the terms indicated in the order of appointment.In case, the same is not mentioned, then the retirement age was fixed at 58 years. At the same time, the Chairman -cum- Managing Director had discretion to continue an employee upto 60 years of age depending upon his performance. For future appointments. it was made clear that the age of superannuation will be 58 only.

There is nothing in the petition to suggest that the resolution was either arbitrary or unreasonable. If persons were appointed with a clear understanding that they were to work upto 60 years, then,by resolution, that right was not taken away. If he was to work upto 58 years of age, then,that right was not taken away. What is done is that in case there is no reference to the age of superannuation, decision was taken that age of superannuation would be 58 years. The rule of retirement did not take away right of person of his livelihood. That right is to hold office for a particular number of years considering the nature of duty. Employer may allow its employee to continue in service but not after the employee has passed the peak of performance. To us, no comparative examples are given. A vague statement has been made that certain persons were continued upto 60 years. When it was pointed out by us that in view of

better performance, they might have been allowed to work upto 60 as per the discretion vested in the Chairman, there was no answer by the learned advocate for the appellant. As a matter of fact, it was necessary for him to call upon the respondents before the learned Single Judge to produce material on which reliance was placed for the purpose of stating that persons discharging similar duties were in fact superannuated at the age of 60 years. As indicated hereinabove. it may be that because of performance, even after 58 years, one may have been continued to work upto 60 and ,therefore, one cannot jump to the conclusion that different treatment is given. Reading the resolution, it appears that all were treated equally. In case , no age of superannuation was prescribed, one was required to retire at 58. But in cases ,because of contract,if age of superannuation was 60 years, naturally, decision cannot be taken against them.It should be borne in mind that decision was taken by the Corporation ,an independent autonomous body and having its constitution and rules to abide by and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own right. Unless its action is mala fide,even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision,however more prudent,commercial or businesslike it may be, for the decision of the corporation (see Financial Corporation vs. Naini Oxygen and Acetylene Gas Limited, (1995) 2 SCC, 754). In the instant case, what corporation did was by passing a resolution on 28.4.1986, it removed confusion in the interpretation of rules. No right of individual was taken away. So far as age of superannuation was concerned, it specifically pointed out that in absence of age of superannuation in the appointment letter, the same should be treated as 58 years. In view of this resolution, it is very clear that except pointing out age of superannuation, no right is taken away and,therefore, in view of the conditions mentioned in the letter at serial No. 10, the appellant is bound by the same.

In view of what we have stated hereinabove, we dismiss the appeal.
